

Improvements

RCW 79.90.055: "Improvements."

Whenever used in chapters 79.90 through 79.96 RCW the term "improvements" when referring to aquatic lands means anything considered a fixture in law placed within, upon or attached to such lands that has changed the value of those lands, or any changes in the previous condition of the fixtures that changes the value of the land.

RCW 79.90.515: Aquatic lands--Rent for improvements.

Except as agreed between the department and the lessee prior to construction of the improvements, rent shall not be charged under any lease of state-owned aquatic lands for improvements, including fills, authorized by the department or installed by the lessee or its predecessor before June 1, 1971, so long as the lands remain under a lease or succession of leases without a period of three years in which no lease is in effect or a bona fide application for a lease is pending. If improvements were installed under a good faith belief that a state aquatic lands lease was not necessary, rent shall not be charged for the improvements if, within ninety days after specific written notification by the department that a lease is required, the owner either applies for a lease or files suit to determine if a lease is required. [1984 c 221 § 14.]

RCW 79.94.320: Tide or shore lands of the first or second class--Failure to re-lease tide or shore lands--Appraisal of improvements.

In case any lessee of tide or shore lands, for any purpose except mining of valuable minerals or coal, or extraction of petroleum or

gas, or his successor in interest, shall after the expiration of any lease, fail to purchase, when otherwise permitted under RCW 79.94.150 to be purchased, or re-lease from the state the tide or shore lands formerly covered by his lease, when the same are offered for sale or re-lease, then and in that event the department of natural resources shall appraise and determine the value of all improvements existing upon such tide or shore lands at the expiration of the lease which are not capable of removal without damage to the land, including the cost of filling and raising said property above high tide, or high water, whether filled or raised by the lessee or his successors in interest, or by virtue of any contract made with the state, and also including the then value to the land of all existing local improvements paid for by such lessee or his successors in interest. In case the lessee or his successor in interest is dissatisfied with the appraised value of such improvements as determined by the department, he shall have the right of appeal to the superior court of the county wherein said tide or shore lands are situated, within the time and according to the method prescribed in RCW 79.90.400 for taking appeals from decisions of the department. In case such tide or shore lands are leased, or sold, to any person other than such lessee or his successor in interest, within three years from the expiration of the former lease, the bid of such subsequent lessee or purchaser shall not be accepted until payment is made by such subsequent lessee or purchaser of the appraised value of the improvements as determined by the department, or as may be determined on appeal, to such former lessee or his successor in interest. In case such tide or shore lands are not leased, or sold, within three years after the expiration of such former lease, then in that event, such improvements existing on the lands at the time of any subsequent lease, shall belong to the state and be considered a part of the land, and shall be taken into consideration in appraising the value, or rental value, of the land and sold or leased with the land.

WAC 332-30-118: Tidelands, shorelands and beds of navigable waters.

(13) Abandoned structures determined to be unsightly or unsafe by the department shall be removed from these aquatic lands by the owner of the structures upon demand by the department or by

the department in which case the owner will be assessed the costs of such removal.

WAC 332-30-122: Aquatic land use authorization.

All requirements in this section shall apply to the department. Subsection (2) of this section (except subsection (2)(a)(iii) and (b)(iii) of this section), subsections (3)(a), and (4)(a) shall apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(4) Structures and improvements on aquatic lands.

(a) Authorization for placing structures and improvements on public aquatic lands shall be based on the intended use, other uses in the immediate area, and the effect on navigational rights of public and private aquatic land owners. Structures and improvements shall:

- (i) Conform to the laws and regulations of any public authority;
- (ii) Be kept in good condition and repair by the authorized user of the aquatic lands;
- (iii) Not be, nor become, a hazard to navigation;
- (iv) Be removed by the authorized user as stipulated in the authorization instrument.

(b) In addition to aquatic land rentals and fees, rent shall be charged for use of those structures and improvements:

- (i) Owned by the department, under contract to the department for management; or that become state property under RCW 79.94.320;
- (ii) As may be agreed upon as part of the authorization document;
- (iii) Installed on an authorized area without written concurrence of the department; or
- (iv) Not covered by an application for use of aquatic lands, or a lawsuit challenging such requirements, within ninety days after the date of mailing of the department's written notification of unauthorized occupancy of public aquatic lands.

(c) Only land rental and fees shall be charged for public aquatic lands occupied by those structures and improvements that are:

- (i) Authorized in writing by the department;

(ii) Installed prior to June 1, 1971 (effective date of the Shoreline Management Act) on an area authorized for use from the department; or

(iii) Covered by an application for use of aquatic lands within ninety days after the date of mailing of the department's written notification of unauthorized occupancy of public aquatic lands.

Discussion on improvements

Authorization for placement of new physical improvements on state-owned aquatic lands should be evaluated carefully to avoid additional risks and impacts to the state, including environmental and navigational concerns. The state may be liable for claims arising from the use of abandoned or unauthorized physical improvements placed on state-owned aquatic lands. The department requires financial assurance to guarantee payment of rent and removal of all improvements from the lease area. This can be a bond, and must be twice the annual rent plus the estimated cost of removing the improvements.

When a lessee fails to re-lease tidelands or shorelands, or when the department determines it is not in the best interests of the state to re-lease the previously leased tidelands or shorelands, the department must appraise the value of all improvements to the land, including fill. If the lands are subsequently leased to a new lessee within three years, the new lessee must pay the previous lessee for the value of the improvements. If the lands are not subsequently leased for three years, the improvements will belong to the state. SEE ALSO: Use authorizations.

Fill is one form of improvement that requires special attention to the impacts to aquatic lands. SEE ALSO: Fill.

Industrial uses

SEE: Commercial and industrial uses.

Interest rates

RCW 79.90.535: Aquatic lands--Interest rate.

The interest rate and all interest rate guidelines shall be fixed, from time to time, by rule adopted by the board of natural resources and shall not be less than six percent per annum.

WAC 332-30-106 Definitions.

(29) "Interest rate" shall be twelve percent per annum (RCW 79.90.520).